

## APPEAL NO. 92012

On November 21, 1991, a contested case hearing was held at (city), Texas, (hearing officer) presiding as hearing officer. He determined that the appellant's hernia was not job related and denied benefits under the Texas Workers' Compensation Act. TEX. REV. CIT. STAT. ANN. arts 8308-1.01 *et. seq.* (Vernon Supp 1992) (1989 Act). Appellant urges error in the hearing officer's Finding of Fact Number 5 and his Conclusion of Law Number 4 which provide:

"Finding 5: Claimant sustained a left inguinal hernia on (date of injury)."and,"Conclusion 4: Claimant did not sustain a left inguinal hernia injury while in the course and scope of employment with the Employer on (date)."

## DECISION

We affirm the decision of the hearing officer finding it not to be so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Co. v. Hutchinson, 814 S.W. 2d 539 (Tex. App. - Austin 1991, n.w.h.).

The appellant worked for (employer) on (date), when he was knocked off a tractor and suffered compensable injuries. (employer) carrier, respondent here, paid temporary income benefits (TIBs) and medical benefits for those injuries. Whether the appellant also sustained a left inguinal hernia at that time was the matter in question at the contested case hearing.

The appellant testified he was thrown some eight feet from the tractor to the ground, that he landed on his head and neck and that he rolled out of the way of the tractor and was rendered unconscious for about 30 seconds. He was taken to the emergency room of a hospital by a co-worker and was subsequently treated by a (Dr. W) for multiple soft tissue injuries and injury to the trunk. Appellant was seen by Dr. W on a number of occasions during the ensuing weeks and continued treatment for the accident related injuries. In a statement dated July 9, 1991, Dr. W summarizes the case:

"During the accident, he sustained an injury to the neck with cervical strain and experienced persistent muscular and musculoskeletal pain. I was concerned that he would develop C-8 radiculopathy and subsequently had him see a neurologist, but it appears that with conservative management he is substantially improved.

At this point, he would be cleared to return to his routine job description; however, approximately five days ago he developed a hernia. This is symptomatic and is going to require surgical correction, and he is now going to be disabled because of that. I anticipate that he will see the surgeon next week, and this will of course delay his return to work a bit more."



Dr. W's outpatient notes of July 9, 1991 reflect that the appellant's "work-related injuries have resolved" and that he "is going to need to be on continued disability now because of his hernia, of course this is not work related." Dr. W notes that he arranged for the appellant to see another doctor for the hernia repair but that the appellant failed to keep the scheduled appointment. Dr. W also states the appellant reported "that on (date of injury), when he was out walking around some exhibits at (city) he developed some pain, stinging or burning sensation down in the left side of the groin, and later noticed a bulge in the scrotal sac while he was having a bowel movement." In a letter dated October 22, 1991, Dr. W confirms his prior medical diagnosis and opinion.

The appellant testified that pursuant to instructions he stayed in bed virtually all the time from the date of his injuries on (date) until (date of injury) and did nothing strenuous during that time. He stated that on (date of injury) he was feeling "pretty good" at that time, "my back wasn't hurting me and I decided to get up and me and my family would go out to the festivities out there off (city) and look around . . . ." He states when he got up and "went to the rest room to relieve myself and while doing so I felt kind of a bulge or popping sensation in the upper part of my scrotum . . . ." Later, while at (city) walking around he "experienced a lot of burning and stinging sensation, I felt sort of nauseated from it and I was hardly able to walk . . . ."

Appellant testified he saw Dr. W on July 9th and that Dr. W advised him his work related injuries had resolved and that he was referring the appellant to another doctor for the hernia that had manifested itself on (date of injury). The appellant did not keep this appointment but went to another doctor, (Dr. G) and also got a second opinion concerning the necessity for surgery. Hernia repair surgery was subsequently performed.

A statement from Dr. G was admitted and reflects his opinion:

". . . that the force of injury that he sustained on his fall with the original head and neck injury was sufficient to damage the groin. The patient subsequently developed a complete hernia, that is, it finally went all the way to the scrotum when it exited the external ring and that is when he noticed the popping sensation."

Clearly, there is conflicting medical opinion evidence in this case. Too, there is some degree of variation in the appellant's version of the events surrounding the appearance of the left inguinal hernia around the (date of injury). In this regard, it was not clear if the manifestation of the hernia was over a period of time or whether it was sudden and occurred when the appellant arose on the morning of the (date of injury) or later in the day as he and his family toured the exhibits at (city).

In any event, all of these matters were before the hearing officer and he heard and observed the appellant testify. It is his responsibility, and he has the authority, to sift through all the evidence and testimony and make determinations of fact. Article 8308-



6.43(e) specifically provides:

"The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence, . . ."

As the trier of fact he must resolve conflicts in the evidence presented and in testimony given and may believe all or part or none of the testimony of a witness. Texas Workers' Compensation Commission Appeal No. 91119 (Docket No. BU-00041-91-CC-1) decided February 7, 1992 and authorities cited therein. The weight to be given conflicting evidence of experts is also a matter for the hearing officer, as trier of fact, to determine. Atkinson v. United States Fidelity Guaranty Co, 235 S.W. 2d 509 (Tex. Civ. App. - San Antonio 1950, writ ref'd n.r.e.). That inferences or conclusions different from or inconsistent with those of the hearing officer may be drawn from the evidence, or even find equal support in the evidence, is not an appropriate basis to disturb his decision. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W. 2d 701 (Tex. Civ. App. - Amarillo 1974, no writ); Texas Workers' Compensation Commission Appeal No. 91102 (Docket No. FW-A-129124-CC-FW31) decided January 22, 1992.

After reviewing the complete record of the contested case hearing, the request for review and the reply thereto, we do not find that the findings of fact, conclusions of law and the decision of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re Kings Estate, 244 S.W. 2d 660 (Tex 1951); Texas Workers' Compensation Appeal No. 91129 (Docket No. BU-00022-91-CC-1) decided February 10, 1992. Accordingly, the findings, conclusions, and decision of the hearing officer are affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Robert W. Potts  
Appeals Judge